

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PROGRESSIVE DIRECT INSURANCE  
COMPANY,  
  
Plaintiff,  
  
v.  
  
DANIEL J. ANDREW, et al.,  
  
Defendants.

Case No. C22-1466-RSM

ORDER GRANTING PLAINTIFF'S  
MOTION FOR DEFAULT JUDGMENT  
AGAINST DANIEL J. ANDREW

This matter comes before the Court on Plaintiff Progressive Direct Insurance Company ("Progressive")'s Motion for Default Judgment Against Defendant Daniel J. Andrew. Dkt. #14. Plaintiff seeks an order granting default judgment against Defendant Andrew and a declaration that Defendant Andrew is not entitled to coverage under the subject Progressive policy regarding any claims arising from the subject accident. Having considered the applicable briefing and the remainder of the record, the Court GRANTS the motion and enters default judgment against Defendant Andrew.

At the default judgment stage, the Court presumes all well-pleaded factual allegations are true, except those related to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987); *see also Fair House. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Where those facts establish a defendant's liability, the Court has discretion, not an obligation, to

1 enter a default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *Alan Neuman*  
2 *Productions, Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988).

3 Plaintiff Progressive is an insurance company, which issued the following Washington  
4 Auto Policy of insurance to Defendant Andrew, policy number 91870564, in effect from June  
5 22, 2021, to December 22, 2021, (hereinafter, the “Progressive Policy”). Dkt #1 ¶¶ 1.1–1.2; Dkt.  
6 #14 at 4. The Progressive Policy liability limits provide: (1) \$50,000 per person and \$100,000  
7 per accident in bodily injury liability and (2) \$50,000 per accident in property damage liability.  
8 Dkt. #14 at 4.

9  
10 On or about August 19, 2021, Defendant Andrew was operating his motorcycle (the  
11 “Motorcycle”) westbound on State Highway 18 in Issaquah, Washington. Declaration of Joshua  
12 Cantrell, Dkt. #15 (“Cantrell Decl.”), Ex. 1 ¶ 5. Katherine E. Petkovits was a passenger riding  
13 on the back of the Motorcycle when Defendant Andrew struck the back of a utility trailer causing  
14 the Motorcycle to lose control. Cantrell Decl., Ex. 1 ¶ 6. As a result of the collision, Ms. Petkovits  
15 fell off the Motorcycle and died (the “Subject Accident”). Cantrell Decl., Ex. 1 ¶ 9.

16  
17 On July 18, 2022, Lance Petkovits and Laurie J. Murray (the “Underlying Plaintiffs”)  
18 initiated an action against Defendant Andrew and Jane Doe Andrew entitled, *Lance Petkovits, et.*  
19 *al. v. Daniel J. Andrew, et. al.*, Superior Court of the State of Washington, Pierce County Case  
20 No. 22-2-07661-1 (the “Underlying Lawsuit”). Cantrell Decl., Ex. 1. The Underlying Lawsuit  
21 asserts a cause of action for wrongful death. *Id.* The Underlying Lawsuit also alleges that  
22 Defendant Andrew’s negligent and inattentive driving caused the Underlying Plaintiffs to suffer  
23 (1) economic loss, including loss of net accumulations to the Estate of Katherine E. Petkovits  
24 and medical, funeral, and burial costs and (2) pain and suffering, anxiety, and emotional distress  
25 prior to her death. Cantrell Decl., Ex. 1 ¶ 8-11.

On August 4, 2022, Progressive agreed to defend Defendant Andrew pursuant to an express Reservation of Rights in the Underlying Lawsuit. Cantrell Decl., Ex. 3. The relevant Progressive Policy contained the following relevant definitions:

2. **“Auto”** means a land motor vehicle:

- a. of the private passenger, pickup body, or cargo van type;
- b. designed for operation principally upon public roads;
- c. with at least four wheels; and
- d. with a gross vehicle weight rating of 12,000 pounds or less, according to the manufacturer’s specifications. However, “auto” does not include step-vans, parcel delivery vans, or cargo cutaway vans or other vans with cabs separate from the cargo area.

...

13. **“Trailer”** means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by an auto and not being used:

- a. for commercial purposes;
- b. as an office, store, or for display purposes; or
- c. as a passenger conveyance

9611D WA (7/16). Cantrell Decl., Ex. 2.

On October 17, 2022, Progressive filed this Declaratory Judgment action seeking a determination of coverage for any claims arising out of the Subject Accident. Dkt. #1. On November 6, 2022, Andrew was personally served with this Declaratory Judgment action. Dkt. #12. On March 9, 2023, Defendants Lance Petkovits and Laurie J. Murray voluntarily agreed to be dismissed from this lawsuit. Dkt. #10. On March 16, 2023, the Court entered an Order of Default against Andrew. Dkt. #13. Defendant Andrew has not appeared or defended in this matter. Declaration of Ryan Bisel, Dkt. #12 (“Bisel Decl.”) ¶ 2 - 3.

The evidence shows that the Progressive Policy does not provide coverage for claims against Andrew arising out of the Subject Loss. *See* Dkt. #14 at 5 – 9. Accordingly, Plaintiffs’ Motion for Default Judgment Against Defendant Andrew is GRANTED and the Court hereby enters default judgment against Defendant Andrew as follows:

1 Defaulted Defendant Andrew is not entitled to any coverage pursuant to the terms and  
2 conditions of the following policy of insurance issued to Andrew by Progressive  
3 regarding Progressive Policy No. 918705648 (effective 06/22/2021 – 12/22/2021) for any  
4 and all claims for damages associated with the claims asserted against them and/or arising  
5 out of the August 19, 2021, motorcycle accident (the “Subject Accident”) which were or  
6 could have been raised in the matter entitled *Lance Petkovitz et. al. v. Daniel J. Andrew,*  
7 *et. al.*, Superior Court of the State of Washington, Pierce County Case No. 22-2-07661-  
8 1. Progressive owes no defense or indemnity obligations under the foregoing policies for  
9 any claims associated with or arising out of the Subject Accident.

10 The Clerk is directed to enter default judgment in accordance with this order.

11 DATED this 25<sup>th</sup> day of April, 2023.

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13 RICARDO S. MARTINEZ  
14 UNITED STATES DISTRICT JUDGE  
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